

RECEIVED

DOCKET FILE COPY ORIGINAL

NOV.- 8 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of:)	MM DOCKET NO. 93-263
)	
DESOTO BROADCASTING CORPORATION)	File No. BPH-920324ME
)	
CARY D. CAMP)	File No. BPH-920402MI
)	
For a Construction Permit for a)	
New FM Station on Channel 284C3)	
at Mansfield, Louisiana)	

TO: Honorable Walter C. Miller
Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

DeSoto Broadcasting Corporation ("DeSoto") and Cary D. Camp ("Camp"), jointly and by their counsel, hereby respectfully request the Presiding Judge to approve the accompanying Settlement Agreement between them, dismiss Camp's application with prejudice, and grant DeSoto's application. In support whereof, the following is stated.

By a Hearing Designation Order, DA 93-1210, released October 18, 1993, the mutually exclusive applications of DeSoto and Camp were designated for a comparative hearing (along with that of another applicant now dismissed).

The parties have now agreed to settle their differences rather than to litigate. They have entered into a Settlement Agreement (which is submitted herewith as Appendix 1) pursuant to which DeSoto would do the following in exchange for the dismissal of Camp's application: (1) pay Camp up to \$25,000 (but not more than Camp's reasonable and legitimate expenses incurred in the preparation and posecution of its application,

and not more than approved by the Commission); and (2) grant to Camp a right of first refusal to purchase the Station for ten years.

The Settlement Agreement includes an Exhibit A containing an itemized listing of Camp's reasonable and legitimate expenses incurred during the preparation and prosecution of its application. The expenses shown exceed \$25,000. Therefore, it appears that Camp can receive the maximum amount of \$25,000 promised in the Agreement. The Settlement Agreement also includes statements in Paragraph 9 to satisfy the requirements of Section 73.3525(a) of the Commission's rules regarding the applicants' certifications as to consideration, motivation and the benefit to the public interest to be derived from the settlement.

There are no basic disqualifying issues pending against DeSoto. DeSoto was required by the Hearing Designation Order to file an amendment to report the address of one of its principals. Such an amendment is being filed of even date herewith with an appropriate petition for leave to amend. There appears to be no obstacle to the grant of DeSoto's application.

The grant of this Joint Request would serve the public interest because time-consuming and expensive litigation would be avoided. This would conserve the resources of the parties and of the Commission. It would also permit the sooner initiation of a new broadcast service for the community of Mansfield, Louisiana.

Consistent with current Commission regulation and policy, and contingent upon the approval of the Settlement Agreement, DeSoto requests leave to withdraw its integration and divestiture commitments made in connection with its application and hereby seeks to be relieved of them.

WHEREFORE, DeSoto and Camp respectfully urge the Presiding Judge (1) to approve the accompanying Settlement Agreement, (2) to dismiss Camp's application with prejudice, and (3) to grant DeSoto's application.

Respectfully submitted,

DESOTO BROADCASTING CORPORATION

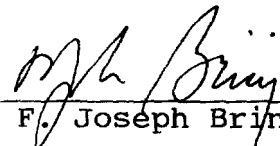
By: 
Donald E. Martin

DONALD E. MARTIN, P.C.
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036
(202) 887-5070

Its Attorney

and

CARY D. CAMP

By: 
F. Joseph Brinig

BRINIG & BERNSTEIN
Suite 200
1818 N Street, N.W.
Washington, D.C. 20036
(202) 331-7050

His Attorney

November 8, 1993

APPENDIX 1

Appendix 1 is the Settlement Agreement between DeSoto Broadcasting Corporation and Cary D. Camp.

SETTLEMENT AGREEMENT

This Agreement is made by and between DeSoto Broadcasting Corporation ("DeSoto"), a Louisiana corporation whose address is 616 Arcadia Court, Center, Texas 75935, and Cary D. Camp ("Camp"), a resident of Louisiana whose address is 949 Poleman Road, Shreveport, Louisiana 71107 (hereinafter sometimes collectively referred to as the "Parties").

WHEREAS, DeSoto has an application pending before the Federal Communications Commission ("Commission" or "FCC") requesting authority to construct a new FM broadcast station (the "Station") at Mansfield, Louisiana on Channel 284C3 (File No. BPH-920324ME); and,

WHEREAS, Camp has a mutually exclusive application pending with the FCC for the same facilities (File No. BPH-920402MI); and

WHEREAS, the Parties wish to avoid further costly and lengthy litigation; and

WHEREAS, the Parties believe that the settlement proposal herein would be in the public interest because it would resolve this proceeding and allow the prompt initiation of a new FM broadcast service at Mansfield, Louisiana; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the FCC;

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties agree as follows:

1. The Parties will file a Joint Request with the FCC, pursuant to Section 73.3525 of the Commission's rules, seeking:

- A. the approval of this Agreement;

B. the dismissal with prejudice of Camp's application;

C. the grant of DeSoto's application with no condition materially adverse to DeSoto.

The Parties shall submit with the Joint Request a copy of this Agreement executed by the Parties together with all supporting documentation as may be required by Section 73.3525 of the Commission's rules.

2. Camp agrees to request the dismissal with prejudice of his above-identified pending application. Camp agrees to take no action adverse to this Agreement, the Joint Request, any amendment DeSoto may file with respect to its application, the dismissal of Camp's application, or the grant of DeSoto's application.

3. As consideration to Camp for the foregoing and for the performance of Camp's obligations hereunder, DeSoto agrees to the following as shall be more fully described in succeeding paragraphs:

A. DeSoto shall pay to Camp an amount equal to his actual, legitimate, reasonable and prudent expenses in preparing and prosecuting his application not exceeding Twenty-five Thousand Dollars (\$25,000).

B. DeSoto shall grant to Camp a right of first refusal to purchase the Station to expire ten years from the date hereof.

4. DeSoto agrees to pay to Camp an amount equal to his actual, legitimate, reasonable and prudent expenses incurred in

preparing and prosecuting his application not exceeding an amount approved by the Commission and not exceeding Twenty-five Thousand Dollars (\$25,000) (the "Settlement Price"). An itemized accounting of Camp's expenses is attached hereto as Exhibit A. It is agreed that Camp's settlement accounting shall not include the FCC hearing fee of \$6,760 because the parties intend this Agreement to be timely submitted to the FCC so that they may each seek a refund of their respective hearing fees directly from the FCC. DeSoto shall place an amount equal to the expenses claimed by Camp as included in the Settlement Price (but not exceeding \$25,000) in escrow with its counsel, Donald E. Martin, P.C., who shall agree to be the escrow agent for these funds and to honor the obligations of this Settlement Agreement, not later than the date that this Agreement is submitted to the Commission. Said funds held in escrow shall be deposited with a Federally insured banking institution in the Washington, D.C. area. The Settlement Price is to be paid to Camp within three business days following the date of finality of an order released by the FCC (the "Order"), or the last of a series of orders, or other documents, approving this Agreement, dismissing with prejudice Camp's application and granting DeSoto's application with no conditions materially adverse to DeSoto. The Order shall be deemed to be final when it is no longer subject to further administrative or judicial reconsideration, review or appeal. The Parties understand that, absent any request for reconsideration, review or appeal, such an Order by the FCC's Administrative Law Judge would become final on the forty-first (41st) day after its release (except

for extensions which may result pursuant to Section 1.4 of the Commission's rules).

5. DeSoto agrees to grant to Camp the right of first refusal to purchase the Station. Such right of first refusal shall expire ten years from the date hereof. If, during such ten-period, DeSoto receives from a third party purchaser a bona fide offer to acquire the Station or a controlling interest therein, and if DeSoto wishes to sell the Station for the terms of the offer, DeSoto shall, prior to any such sale, first comply with the provisions of this paragraph.

A. DeSoto shall execute in writing and deliver to Camp notice of its desire to sell the Station. The notice shall contain a signed copy of the written offer to purchase, including all price and material terms and conditions offered by the prospective purchaser and the prospective purchaser's name and address. The notice shall be sent by registered mail and shall be deemed to have been given upon receipt.

B. Camp shall have the right, at his option, to acquire an interest in the Station equal to that proposed in the offer from the prospective third party purchaser, at the price and on the terms and conditions offered by the prospective purchaser. If Camp wishes to exercise his option to purchase, he shall, within fourteen (14) days of the date that notice was given to Camp by DeSoto of its desire to sell, comply with the following procedures:

i. Camp shall deliver to DeSoto an executed letter of intent indicating his intent to purchase the Station

at the price and under the terms and conditions offered by the prospective purchaser. Either party may at that time also reserve the right to execute within an additional fourteen (14) days a more formal contract, the material terms of which shall not vary from those of the letter of intent.

ii. With his letter of intent, Camp shall provide DeSoto with documentation demonstrating that he is financially qualified to purchase the Station at the price and under the terms and conditions offered by the prospective purchaser.

iii. Camp shall place an amount of money equal to the prospective purchaser's earnest money escrow deposit as earnest money in an escrow account with a Federally insured banking institution to be administered by an escrow agent acceptable to both DeSoto and Camp.

C. If, through no fault of either DeSoto or Camp, the FCC fails to consent to the assignment of the Station from DeSoto to Camp within six months (or such other time as the parties agree upon) after the filing of an appropriate assignment application, either party may terminate the assignment contract. In such case, the funds placed in escrow by Camp as earnest money pursuant to Paragraph 5(B)(iii) shall be returned to him and the parties shall resume their status quo ante under this Agreement.

D. If the FCC denies an application for consent to assign the Station to Camp for reasons accountable to Camp or if Camp fails to consummate the transaction if and when approved by the FCC, then Camp shall forfeit to DeSoto as liquidated damages the funds he placed (or should have placed)

in escrow pursuant to Paragraph 5(B)(iii) hereof, Camp's right of first refusal shall expire immediately thereupon, and DeSoto shall have no further obligation under this Agreement to offer to sell the Station to Camp.

E. If Camp fails to respond to DeSoto's notice of its desire to sell the Station within the time required pursuant to Paragraph 5(B) hereof, Camp's right of first refusal shall expire immediately thereupon, and DeSoto shall have no obligation under this Agreement to offer to sell the Station to Camp at the price and under the material terms and conditions stated. Notwithstanding the foregoing, Camp's right of first refusal and DeSoto's obligations to Camp pursuant to such right of first refusal shall remain intact and in force as to any other offer received by DeSoto which involves a different price or a difference in the material terms and conditions.

F. This right of first refusal shall not apply to any transaction except that which involves a transfer of control or an assignment of the Station such that DeSoto's present principals, Robert L. Clifford and Gene Fields, would no longer hold, collectively and/or in the aggregate, a 100% interest in the Station. This right of first refusal shall not apply to any transaction whereunder any interest in the Station is transferred between the present principals of DeSoto, or between one such principal (or his heir(s) or his estate) and the heir(s) or the estate of the other.

G. DeSoto shall have no liability to Camp if during the life of Camp's right of first refusal, the FCC fails for any reason whatsoever to renew DeSoto's license to operate the Station.

6. DeSoto shall not be obligated to pay the Settlement Price or any portion thereof, or to honor Camp's right of first refusal to purchase the Station, except as specifically provided in this Agreement.

7. This Agreement is expressly subject to approval by the FCC.

8. The Parties hereto agree to cooperate with each other and with the Commission by expeditiously providing to each other or to the Commission, or both, all additional information that may be reasonably required, and by expeditiously filing the additional documents that may be necessary or appropriate to comply with the Commission's rules or to effectuate the objectives of this Agreement.

9. By executing this Agreement, each Party hereto hereby certifies under the penalty of perjury the following:

A. That neither it nor any of its principals has paid, received, promised to pay, or been promised to receive consideration of any kind, including merger of interests, in exchange for the dismissal of any mutually exclusive application in this proceeding except as set forth in this Agreement.

B. That it did not file its application for the purpose of entering into or effectuating a settlement agreement.

C. That the FCC's approval of this Agreement would be in the public interest because it would allow for the immediate resolution of this proceeding, the conservation of the resources of the Parties and of the Commission, and the sooner initiation of a new aural service for the community of Mansfield, Louisiana.

10. This Agreement is the only Agreement between the Parties pertaining to the subject matter hereof. This document sets forth all of the terms and conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by a written instrument executed by both Parties.

11. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their heirs, successors and assigns.

12. The Parties agree that this Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

13. This Agreement shall be governed by and construed under the laws of the State of Louisiana, except for those provisions of the Agreement which are necessarily governed by Federal law, such as the Communications Act of 1934, as amended.

14. Any notices or other communications required or permitted hereunder shall be delivered personally or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed as follows:

To DeSoto:

Gene Fields, President
DeSoto Broadcasting Corporation
P. O. Box 1292
Greenville, Texas 75403

with copy to:

Donald E. Martin, Esquire
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036.

To Camp:

Cary D. Camp
949 Poleman Road
Shreveport, Louisiana 71107

with copy to:

F. Joseph Brinig, Esquire
Brinig & Bernstein
Suite 200
1818 N Street, N.W.
Washington, D.C. 20036.

15. Each party hereto expressly warrants that it has the full power and authority to enter into this Agreement and to execute the same, and that there is no constraint upon such party's legal ability to perform its obligations hereunder.

16. Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal or equitable remedies that are available under this Agreement.

17. If by the date six months from the date that this Agreement is submitted to the FCC for its approval, the FCC has not released an order which has become final approving this Agreement, either party may terminate this Agreement by providing written notice to the other. In such case, the Parties shall then resume their status quo ante.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have affixed their signatures to this Agreement on the date(s) indicated below:

Gene Fields, Vice President
DESOTO BROADCASTING CORPORATION

Date

CARY D. CAMP

Date

17. If by the date six months from the date that this Agreement is submitted to the FCC for its approval, the FCC has not released an order which has become final approving this Agreement, either party may terminate this Agreement by providing written notice to the other. In such case, the Parties shall then resume their status quo ante.

IN WITNESS WHEREOF and intending to be legally bound, the Parties have affixed their signatures to this Agreement on the date(s) indicated below:


Gene Fields, Vice President
DESOTO BROADCASTING CORPORATION

11-8-93
Date

CARY D. CAMP


Date

17. If by the date six months from the date that this Agreement is submitted to the FCC for its approval, the FCC has not released an order which has become final approving this Agreement, either party may terminate this Agreement by providing written notice to the other. In such case, the parties shall then resume their status quo ante.

IN WITNESS WHEREOF and intending to be legally bound, the parties have affixed their signatures to this Agreement on the date(s) indicated below:

Gene Fields, Vice President
DESOTO BROADCASTING CORPORATION

Date


GARY D. SAMP

11/8/93
Date

SETTLEMENT AGREEMENT EXHIBIT A

Exhibit A is an accounting of the expenses incurred by Cary D. Camp in the preparation and prosecution of his application.

DECLARATION

I, Cary D. Camp, hereby make this declaration under penalty of perjury on November 8, 1993.

On April 2, 1992, I filed an application for a new FM station on Channel 284C3 at Mansfield, Louisiana. I have, subject to the approval of the Presiding Judge, entered into a agreement with a competing applicant, DeSoto Broadcasting Corp., which calls for the dismissal of my application in return for payment of my out-of-pocket expenses incurred in connection with the application and gives me a first option to purchase the station in the event it is sold. No other consideration has been promised or paid to me with respect to the application.

I have requested that my engineer and my attorneys submit declarations specifying their charges relating to preparation, filing and prosecution of my application. Those statements are attached hereto. In addition to these charges, whose accuracy I attest, I have paid FCC application and hearing fees.

My application was not filed for the purpose of reaching or carrying out a financial or other settlement. It was not until after the Mansfield Hearing Designation Order was released and I spoke to Mr. Gene Fields of DeSoto that I decided that this settlement was the best course of action for me. I believe grant of the Settlement Agreement will serve the public interest in that it would assure the earliest possible initiation of service to Mansfield, Louisiana.


Cary D. Camp

Attachment

CHARGES INCURRED IN THE MANSFIELD APPLICATION

FCC FM Application Filing Fee	\$ 2,030.00
Legal Fees (Brinig and Bernstein)	13,160.55
Engineering Fees (A.T. Moore)	<u>9,896.75</u>
TOTAL	\$25,087.30

Hearing Fee	\$ 6,760.00
-------------	-------------

(not subject to reimbursement
under Settlement Agreement)

LAW OFFICES
BRINIG AND BERNSTEIN
SUITE 200
1818 N STREET, N.W.
WASHINGTON, D. C. 20036

F. JOSEPH BRINIG
LAWRENCE BERNSTEIN

(202) 331-7050
FAX: (202) 331-9306

OF COUNSEL TO:
CONLON, FRANTZ, PHELAN & KNAPP

DECLARATION

I, F. Joseph Brinig, hereby make this declaration under penalty of perjury and state:

I am an attorney practicing before the Federal Communications Commission. Brinig and Bernstein is counsel to Cary D. Camp for matters relating to the prosecution of Mr. Camp's application for a new FM station at Mansfield, Louisiana. We have, at all times, been counsel to Mr. Camp since prior to the time the application was filed in April, 1992.

In this capacity, we have assisted in the preparation and filing of the application, legal research and filing of an engineering amendment, review and analysis of other competing applicants, preparation for the comparative hearing in this matter and, most recently, in connection with the settlement negotiations and proposed settlement agreement.

To date, legal fees and expenses charged Mr. Camp by Brinig and Bernstein for these necessary and prudent activities relating to his application total Thirteen Thousand One Hundred Sixty Dollars and Fifty-Five Cents (\$13,160.55).


F. Joseph Brinig

November 8, 1993
Date

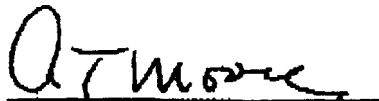
A.T. Moore
3712 Cornell Dr.
Shreveport, La. 71107

DECLARATION

I, A. T. Moore, hereby make this declaration under penalty of perjury on November 8, 1993.

I am a technical consultant to broadcast applicants and my qualifications are a matter of record with the Federal Communications Commission. In this capacity I, provided technical assistance to Cary D. Camp in preparation of his original application and subsequent amendments filed in conjunction with his application for a new FM station at Mansfield, Louisiana. The technical assistance included preparation of maps showing acceptable area in which to locate transmitter site, study of restricted area, site selection at two different locations, terrain analysis, two complete applications, and analysis of competing applications.

The technical fees and my out-of-pocket expenses charged to Cary D. Camp in conjunction with his Mansfield, Louisiana, application total Nine Thousand Eight Hundred Ninety Six Dollars and Seventy Five Cents (\$ 9,896.75) to this date.


A. T. Moore

November 8, 1993
Date-

CERTIFICATE OF SERVICE

Donald E. Martin hereby certifies this 8th day of November, 1993 that a copy of the foregoing document has been served by United States mail with first class postage prepaid upon each of the following:

* Honorable Walter C. Miller
Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554

Charles Dziedzic, Esquire
Hearing Branch
Mass Media Bureau
Federal Communications Commission
Washington, D.C. 20554

F. Joseph Brinig, Esquire
Brinig & Bernstein
Suite 200
1818 N Street, N.W.
Washington, D.C. 20036
Counsel for Cary D. Camp


Donald E. Martin

* Served by hand delivery.